

THE SHOSHONE-BANNOCK TRIBES

THE WILDERNESS SOCIETY ET AL.

IBLA 88-383

Decided April 17, 1989

Appeals from decisions of the Idaho Falls District Office, Bureau of Land Management, granting rights-of-way I-22460 and I-22461.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way--National Environmental Policy Act of 1969:
Environmental Statements--Rights-of-Way: Generally

No violation of the National Environmental Policy Act of 1969 occurs upon BLM's issuance of a right-of-way authorizing construction of an all-weather road through the wintering habitat of an elk herd if the environmental impact statement accompanying this action adequately describes the impacts of such road, as mitigated by a seasonal road closure adopted as a part of the right-of-way grant.

APPEARANCES: Daniel S. Press, Esq., Washington, D.C., for the Shoshone-Bannock Tribes; Edwin W. Stockly, Esq., Eagle, Idaho, for The Wilderness Society et al.; Robert S. Burr, Esq., Office of the Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Shoshone-Bannock Tribes (Tribes) and The Wilderness Society et al. ^{1/} have appealed from decisions of the Idaho Falls District Office, Bureau of Land Management (BLM), dated February 22, 1988, granting rights-of-way I-22460 and I-22461. Right-of-way I-22460 was issued to Fremont County, and right-of-way I-22461 to Jefferson County (Counties). In each case, the authority for BLM's action was section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1982).

^{1/} In addition to The Wilderness Society, appellants include the Committee for Idaho's High Desert, Idaho Environmental Council, and the Idaho Natural Resources Legal Foundation.

The rights-of-way authorize the Counties to "construct, operate, maintain, and terminate a road on public lands." The road at issue, the Egin-Hamer Road, crosses directly through the Nine Mile Knoll Area of Critical Environmental Concern (ACEC). This area had been identified and designated as an ACEC in BLM's 1985 Medicine Lodge Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (1985 FEIS). The RMP noted that the Nine Mile Knoll Area was "the key crucial habitat for wintering elk" and provided a narrow corridor through which approximately 2,000 head of elk migrate (1985 FEIS at 45). In recognition of these facts, the RMP imposed certain constraints on the use of this area, including winter closure to vehicular traffic and a prohibition of new roads or major rights-of-way. Id. at 33.

The applications for rights-of-way filed by the Counties in October 1985 sought year-round use of the road through the ACEC. Because issuance of these rights-of-way would have been contrary to the 1985 RMP, BLM amended this plan in February 1987, when it approved the Egin-Hamer Plan Amendment FEIS (1987 FEIS). The 1987 FEIS considered the environmental impacts of six alternative plans and identified one plan (alternative D) as the proposed decision. Alternative D called for constructing the Egin-Hamer Road on the route sought by the Counties but provided for road closure between December 1 and March 31 each year. This route was along the general route of a preexisting unimproved road with some realignment.

Shortly after BLM issued I-22460 and I-22461, the Tribes filed their notice of appeal and petitioned the Board to stay BLM's implementation of the Egin-Hamer Plan Amendment. By order dated July 12, 1988, the Board denied this request, directed that during the pendency of the appeal the Egin-Hamer Road would be closed from November 1 through April 30, and called for certain documents which had not been made a part of the record then before the Board. Subsequent to the Board's order, and very shortly after submittal of the last of the documents called for in the order, Secretary Hodel took jurisdiction over the case pursuant to 43 CFR 4.5. On November 8, 1988, the Secretary modified that portion of the Board's order expanding the period of road closure, thereby reinstating the closure period set forth in alternative D. 2/ The case was then remanded to the Board.

In their statement of reasons (SOR), the Tribes set forth five arguments why BLM erred in issuing I-22460 and I-22461. The first of these arguments is the contention that BLM has failed to adequately assess the negative impacts of the road on wintering elk. In support of this argument, the Tribes note that in its 1987 FEIS, BLM acknowledged that the proposed seasonal closure of the Egin-Hamer route could cause a possible delay in the elk migration into the area, and could also move the elk out of the area earlier in the spring than would be the case if the elk herd were left undisturbed (1987 FEIS at 54). The Tribes further find that the 1987 FEIS

2/ This order, which limited the scope of the Board's review authority set forth in 43 CFR 4.1 in this case, provides that it "shall remain in effect until the Interior Board of Land Appeals reaches its final decision on the appeal as a whole."

goes to great lengths to document the adverse impacts to elk from road-related harassment, which impacts include "permanent displacement from critical winter range; stress-related factors that decrease survivability; [and] increased potential for poaching" (SOR, Apr. 22, 1988, at 3).

In addition, appellant Tribes refer to BLM's 1978 Sands Habitat Management Plan (HMP), which lists as an objective: "Minimize the degree of harassment on elk due to human activity within the HMP boundaries from November 15 to April 15, particularly in zone II [which includes the Egin-Hamer Road]" (HMP at 23).

All of the Tribes' citations are to BLM studies and point to no impact on the Sand Creek elk herd that has not been previously identified and assessed by BLM. Appellant Tribes fail to establish the inadequacy of BLM's 1987 FEIS by citing its provisions with approval.

Moreover, it appears that some of the impacts that appellant Tribes cite, "permanent displacement from critical winter range; stress related factors that decrease survivability; [and] increased potential for poaching," are the effects of alternative A. This alternative calls for the Egin-Hamer Road to be open year-round. As noted above, BLM selected alternative D, and the impacts of this plan are not the equal of alternative A. See 1987 FEIS at 54.

The Tribes' quotation from the Sands HMP ("Minimize the degree of harassment on elk due to human activity within the HMP boundaries from November 15 to April 15 particularly in Zone II") does suggest that elk may be in zone II before December 1 and after March 31. We note, however, that the HMP distinguishes human harassment resulting from geothermal, oil and gas exploration/development, and logging operations from that resulting from road use and off-road vehicle (ORV) use. The HMP at pages 26 and 70 provides that there will be no activity from these operations in zone II from December 1 to March 15 to protect the elk wintering range. Such operations are presumably allowed at other times. See Egin-Hamer Right-of-Way Environmental Assessment (EA) (January 1986) at 8. The HMP also discloses that the area at issue was closed to ORV use during 1975-78 to reduce human/elk interaction. The period chosen for closure was December 1 through March 15. Expansion of this closure to include additional lands was to be considered by BLM. See HMP at 27 and 74. The HMP also indicates that the management of the roads to achieve the HMP objective quoted by the Tribes would depend on the nature of the interference with elk activities. See HMP at 32. ^{3/}

In subsequent pleadings, the Tribes argue that the winter closure provisions of the rights-of-way conflict with the 1987 FEIS acknowledgement that "[t]iming varies from year to year, but, in general, the elk start migrating into the area mid- to late-November depending on the weather * * * [and in] the spring (late March), they move back towards the high country to

^{3/} The ability to read in context the Tribes' quotation from the Sands HMP was earlier denied to this Board because the case files did not include this HMP.

calve." Id. at 12. This argument suggests that appellant misconceives the purpose of the FEIS.

[1] The duty imposed by section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C) (1982), to prepare a detailed statement of the environmental impacts of BLM's proposed action is essentially a procedural one. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 558 (1978). NEPA is not intended to prohibit actions that result in environmental degradation. Rather, its purpose is to ensure that decisionmakers are aware of the full range of consequences that may result from proposed activities. In re Otter Slide Timber Sale, 75 IBLA 380, 383 n.3 (1983). See Idaho Natural Resources Legal Foundation, Inc., 96 IBLA 19, 94 I.D. 35 (1987).

The record reveals that BLM is aware that its limiting the road closure to the 4-month period could cause a possible delay in elk moving into the wintering area and could also cause elk to leave the area earlier in the spring than if left undisturbed. BLM concludes, however, that these changes would be minor and would not have a significant effect on the availability of forage and habitat in the area; elk population is expected to remain at present levels (1987 FEIS at 54). The Idaho Department of Fish and Game (IDFG) concurred with BLM's view. 4/

As a basis for this conclusion, BLM and IDFG refer to a 1985 study of the Sand Creek elk conducted by Cecil Brown, wildlife biologist. Brown's study examined the population, habitat, migration patterns, transition ranges, and calving of the Sand Creek herd and the effect of roads on the herd. BLM also relies on the results of closures during the period December 1 through March 15 in 1975-78.

A BLM decision to grant or deny a road right-of-way will be affirmed when the record before the Board shows the BLM decision to have been made after a reasoned analysis of the factors involved, with due regard to the public interest. See Edward J. Connolly, Jr., 94 IBLA 138, 146 (1986); William A. Sigman, 66 IBLA 53, 55 (1982). Based upon the record now before us we observe that BLM has sought to strike a balance between the utility that the Egin-Hamer Road can bring to its users 5/ and the harm that it can cause to the wintering elk herd (and indirectly to those who hunt the elk). This balance is achieved by road closure between December 1 and April 1. BLM is fully aware of the trade-off it has made, and we cannot say that this trade-off is unreasonable. We hold that the Tribes have not shown error in BLM's action.

4/ Correspondence from the Regional Supervisor, Region 6, IDFG, to the Idaho Falls District Manager, BLM, dated Aug. 16, 1988.

5/ The road provides a farm-to-market route for the farming area northwest of St. Anthony. The road would reduce distance traveled per trip by area farmers and ranchers by 10.6 to 24.5 miles when the road is open. A cost savings for the agricultural community of \$67,000-\$89,000 per year is predicted (1987 FEIS at 41 and 57).

In a similar argument, the Tribes contend that construction of the Egin-Hamer Road will increase ORV access to the Nine Mile Knoll ACEC and thereby cause destruction of vegetation and ORV violations of winter closures. Loss of forage caused by fires would also occur as a result of increased activity, the Tribes state. In support of these contentions, appellant Tribes refer to the 1987 FEIS and, in particular, to a description of the impacts of alternative A.

Because the proposed plan (alternative D) calls for winter road closure, ORV closure violations attributable to increased winter access should not result and, therefore, need not be described under alternative D. Vegetation and forage loss attributable to increased access is described under alternative D in the discussion of recreation-related impacts (1987 FEIS at 56, incorporating by reference pages 39-40 in part).

As above, appellant has called to our attention no impact that was not previously identified by BLM. The 1987 FEIS reveals that BLM considered these access-related impacts and found that these impacts, inter alia, did not outweigh the benefits of an all-weather road. We cannot say on the basis of the evidence that BLM's decision was unreasonable.

The Tribes' second argument on appeal is the contention that BLM has failed to provide a clear statement of the conditions and procedures that it will use to enforce road closure, if the Counties fail to do so, or revoke the rights-of-way. This argument is similar to the single argument advanced by The Wilderness Society et al. These appellants argue that the rights-of-way contain no reference to temporary suspension of activities per 43 CFR 2803.3 despite the fact that issuance of these grants was to have been conditioned upon the Counties' acceptance of such a provision. As support for this contention, appellants point to the State Director's Record of Decision, dated September 21, 1987, which states in relevant part:

The decision on the Egin-Hamer plan amendment is to offer Fremont and Jefferson Counties a right-of-way for the road on the route they applied for. Issuance of a right-of-way grant will be conditional upon the counties' acceptance of the following stipulations:

The road will be closed to vehicle traffic from December 1 through March 31 every year.

* * * * * *

The offered right-of-way will state that noncompliance with the terms, conditions, or stipulations of the grant will result in termination of the grant. The procedures for terminating the grant would be those described in 43 CFR 2803.4, including written notice to the grantee. If an immediate temporary suspension of activities on the right-of-way is required, then the procedures of 43 CFR 2803.3 would be used.

Neither the Tribes nor The Wilderness Society has identified any statute or regulation that BLM is said to have transgressed. The right-of-way provisions that appellants propose might prove of value to the agency and serve to encourage the Counties to enforce the winter road closure. BLM's failure to adopt these provisions, however, does not establish error. It is not for appellants to write the right-of-way stipulations for the agency. This is a task entrusted to BLM, and, so long as its performance is reasonable and reflects a due regard for the public interest, it will not be disturbed on appeal. See William A. Sigman, supra at 55. Appellants have failed to demonstrate error in BLM's decision by these arguments.

Moreover, the record shows that BLM has taken several measures to ensure that the Counties will enforce the 4-month road closure. Incorporated in the rights-of-way are certain terms and conditions, the first of which states that the requirements to close the road every year from December 1 through March 31 must be met by whatever means are necessary. The Counties are also required to maintain in full force and strictly enforce their ordinances closing the Egin-Hamer Road to all vehicle traffic during this 4-month period. Any construction, maintenance, or operation of the road must occur only during the period from April 1 through November 30 each year. Upon verification that any of the above provisions have not been strictly adhered to, the right-of-way shall be subject to immediate termination. 6/

The terms and conditions of the rights-of-way further provide that the holders shall comply with all applicable Federal laws and regulations. See also 43 CFR 2801.2(a)(1). As counsel for BLM points out, the rights-of-way will be subject to 43 CFR 2803.3, which authorizes BLM to effect an immediate, temporary suspension of activities within a right-of-way for violation of its terms and conditions when such action is necessary to protect public health, safety, or the environment.

The record also shows that BLM required the Counties to comply with and be bound by a plan of operations. This plan calls for enforcement of road closure by the Sheriff's Offices of the respective Counties, requires installation of barriers to block motor vehicle traffic, and provides that signs will be placed at each end of the road to advise of winter road closure.

Appellant Tribes' next argument on appeal is the contention that BLM's planning process violated required planning criteria and policy. Specifically, BLM is said to have violated 43 CFR 1610.4-2, which requires BLM, in preparing a resource management plan or revision thereto, to make available its proposed planning criteria for public comment prior to being approved for use in the planning process. When the Tribes voiced this argument to the Director, BLM, in protesting the proposed adoption of the Egin-Hamer Plan Amendment, the Director responded:

6/ Exhibit B to rights-of-way I-22460 and I-22461 at paragraph 5.

Review of the issues raised in the plan protests revealed that the planning criteria were not made available for public comment. Additionally, there was some confusion concerning the status and content of the planning criteria with regard to the proposed right-of-way. However, since the proposal addressed in the plan amendment (to consider approval of a right-of-way application for construction of a road across the Nine Mile Knoll ACEC) was clear throughout the amendment process, we do not regard this situation as sufficient reason to undertake further planning or other remedial action.

The Tribes now seek Board review of this same issue. However, having raised this issue in a protest to the Director, the Tribes are precluded from raising the question on appeal to this Board by the provisions of 43 CFR 1610.5-2(b). Further review of issues raised in the Tribes' protest to the Director, BLM, resides with the district court, and appellant should have sought judicial rather than Board review of those issues.

We have, nevertheless, examined appellant's contention and discern no reversible error. Regulation 43 CFR 1610.4-2, cited by appellant, states that BLM shall prepare criteria to guide development of its RMP, to ensure that it is tailored to the issues identified in 43 CFR 1610.4-1 and to ensure that unnecessary data collection and analyses are avoided. More specifically, the criteria are to serve as guidance for BLM's estimate of the effects of resource management alternatives and for the evaluation of these alternatives and their effects. 43 CFR 1610.4-6 and 1610.4-7. The evaluation of alternatives and their effects enables BLM to select a preferred alternative (1985 RMP and FEIS at 69).

An example of the planning criteria that appellant refers to is set forth in BLM's 1985 RMP and FEIS at page 65 and in the 1984 Medicine Lodge RMP and Draft EIS at page A-2. These criteria urge BLM to consider social and economic values, coordination with other agencies, the public welfare, etc. It is criteria such as these that BLM acknowledges were not exposed to public comment in its preparation of the 1987 Egin-Hamer Plan Amendment.

The Tribes maintain that BLM, by precluding public comment on the proposed planning criteria, has stifled public opposition in its adoption of the agenda for processing I-22460 and I-22461. However, the record reveals that there was substantial public participation throughout the RMP amendment process. In November 1985, 1 month after the Counties filed their right-of-way applications, BLM issued a news release seeking public input regarding the Counties' applications. Again in December 1985, BLM conducted interviews of selected businesses in the Upper Valley to elicit public comment. Questionnaires distributed by Jefferson County also provided public input to the agency (EA at 47).

Three months after the Counties' applications were filed, BLM published its EA and solicited comments from the public. Over 105 responses were received. Only in June 1986, with publication of the Egin-Hamer Plan Amendment Draft EIS, did BLM select a preferred alternative.

Although BLM can be said to have committed a technical error when it did not expose its planning criteria to public comment, the agency had, in fact, sought and received extensive public participation in estimating the effects of management alternatives, evaluating these alternatives, and selecting the preferred alternative prior to the time the criteria were to be employed. Thus, BLM's technical failure to strictly observe 43 CFR 1610.4-2 is not likely to have influenced its ultimate selection of alternative D in the 1987 FEIS. In any event, we note that appellant has pointed to no adverse consequence of BLM's oversight. No reversible error is demonstrated by appellant's argument.

The Tribes' next argument on appeal is the contention that BLM misrepresented the potential for adverse impacts on the Idaho Dunes Tiger Beetle, a candidate for the list of threatened and endangered species. The agency also failed to adequately assess the population status and distribution of this beetle, the Tribes maintain.

BLM's 1987 FEIS discusses the impact of alternative D on the beetle in these terms:

Idaho Dunes Tiger Beetle (Candidate Species)

The proposed action would increase ORV use on existing and potentially occupied habitat for this species. Increased mortalities could be expected; however, this action probably would not cause the species status to be changed. The reasons for a "no change" in status are: 1) the population has a wide distribution across three different dune complexes in the area, and 2) the population numbers are fairly high and appear to be healthy (Gary Shook, pers. comm.)

Id. at 55, incorporating discussion from page 38. Appellant Tribes charge misrepresentation by BLM because this characterization of a "fairly high and * * * healthy" beetle population was erroneously attributed to Gary Shook (SOR at 12). Since 1979, the Tribes maintain, Shook has attempted to correct this erroneous information.

Correspondence in a related pending appeal, IBLA 88-496 (of which we take official notice), confirms that Shook advised BLM by letter dated December 11, 1979, that there had been no inventory of the St. Anthony population of the Dunes Tiger Beetle. In additional correspondence, dated February 3, 1988, 7/ BLM acknowledged that its 1987 FEIS contains "a misunderstanding or perhaps a misinterpretation of what was said" by Shook.

BLM's 1987 FEIS makes repeated reference to the beetle in addition to the disputed passage quoted above. This species, C. arenicola, is found

7/ Correspondence from the Medicine Lodge Area Manager, BLM, to Jane Leeson, Regional Associate, The Wilderness Society, at 1.

on the "wet" dunes ^{8/} of the active sand dune area and is indigenous to the St. Anthony Sand Dune complex. Its gene pool and distribution is limited. Id. at 13.

Information from field investigations and/or recognized experts enabled BLM to prepare a biological assessment of the beetle for submission to the U.S. Fish and Wildlife Service (FWS). FWS, the agency maintaining a list of threatened and endangered species, reported that no emergency listing was required for this species. It did request that BLM monitor this candidate species, and BLM agreed to do this monitoring (1987 FEIS at 66). BLM's biological assessment found that the species' existence was not threatened by the present level of ORV use. The assessment noted that increased mortalities could be expected from the increased ORV activity occasioned by alternative D but, relying on Shook, concluded that these increased mortalities would not be expected to threaten the continued existence of the species.

Counsel for BLM states that the misunderstanding between BLM and Shook did not surface until December 1987. By that time BLM had already made plans to contract for a study of the beetle (BLM Answer, May 25, 1988, at 5). This study was completed in September 1988, by Robert C. Anderson, Ph.D., a professor and entomologist at Idaho State University.

Dr. Anderson reported that the beetle was a species limited in its worldwide occurrence to specific microhabitats associated with a limited number of "wet" dunes in the State of Idaho. Adult beetles were found on all five dunes of the St. Anthony Dunes complex and were typically very active flyers who would fly away as humans approached within 5-10 feet. The occurrence of the adult beetle was predictable, i.e., given knowledge about their habits and habitats, specimens could easily be observed and collected. Other populations of C. arenicola existed in Bannock, Bonneville, Jefferson, and Power Counties, though the populations in those areas were subject to some degree of human perturbation (Study, Sept. 26, 1988, at 2-4, 6, 9-10).

Adult beetles had the ability to burrow and bury themselves quickly. Adults burrowed 3-4 inches below the surface. Larvae of C. arenicola lived in burrows, the larger of which existed solely in the grassy, flatter regions adjacent to dune inclines. Smaller burrows could be extensive and widespread over grassy and naked dune areas. Id. at 4, 7.

Adult beetles were first observed at the St. Anthony Dunes in April, routinely observed until mid-June, and were again abundant on the surface in September. The highest minimum estimated density observed was 8-10 beetles per 353 square feet. Mating was observed from sunrise to sunset during the months of April through mid-June. Id. at 5-7.

^{8/} The "wet" dunes are those areas that remain moist for a longer part of the year than the rest of the surrounding area (1987 FEIS at 13).

In Dr. Anderson's view, C. arenicola did not appear to be in immediate danger, but he noted that the St. Anthony dunes were becoming increasingly popular for recreational activities that may affect its distributional pattern or survival. ORV's probably have no impact on the swifter and more alert adult beetles, Dr. Anderson found, but further study would be necessary to determine whether larval habitat was being negatively affected by ORV activity. Id. at 10.

Regardless of whether BLM misrepresented, misinterpreted, or misunderstood Shook, it is clear that Dr. Anderson's study does not conflict in any material way with the findings set forth in the 1987 FEIS. Indeed, as to the issue of distribution of C. arenicola, the Anderson study shows this species to be more widely distributed than previously believed. Such finding is fully supportive of the FEIS' conclusion that the beetle's candidate status would probably not be changed by the issuance of the rights-of-way. We recognize that the Anderson study was completed after BLM's approval of the FEIS, and was not available for public comment before BLM issued the rights-of-way in question. 9/ However, we find no suggestion in the record that the BLM statement of Shook's professional opinion was in any way intentional or mischievous. 10/ We, therefore, find that appellant Tribes have not established error in the 1987 FEIS, as supported by the Anderson study.

Appellant Tribes' fifth and final argument on appeal criticizes BLM's assessment of the economic impacts of the various alternative plans. This issue is critical, appellant states, because BLM used a net present worth analysis to justify selection of alternative D. The Tribes assert that marginal benefits are systematically overestimated by the agency, that costs are systematically underestimated, and that the net present values for all alternatives except the "no action" alternative are biased upward.

The Tribes' arguments to the Board are substantially similar to those voiced to the Director, BLM, when protesting the 1987 FEIS. BLM's answer to the Board incorporates by reference its September 18, 1987, response to the Tribes. In answering the broad charge that its economic analysis was deficient, BLM states:

Response: In providing the decision-maker with a useful tool, the BLM's economic analysis is not deficient. The BLM has prepared an assessment of economic activity that gives the decision-maker a useful and reasonable comparison of the economic effects of each alternative. Although different methodologies are available for conducting the analysis, and different numbers could be obtained depending on the methodology used, the

9/ This fact gives us some concern. In other circumstances we have suspended BLM decisions which had been issued before the NEPA process had been completed. See In Re Upper Floras Timber Sale, 86 IBLA 296 (1985).

10/ See note 7.

relative ranking of the alternatives would not change. Questions regarding assumptions and data sources are dealt with in subsequent responses. [Emphasis in original.]

Id. at 3-4.

As previously noted, appellant is precluded from raising those arguments previously addressed to the Director, BLM, by the provisions of 43 CFR 1610.5-2(b). Moreover, our review of the arguments reveals no basis for reversing the agency. An economic analysis, though rooted in fact, is nevertheless a matter over which experts may differ. As in the highly technical interpretation of an oil and gas reservoir, well-qualified experts may examine the same facts and arrive at different conclusions. In these disputes, the Board has often stated "[w]hile the conclusions drawn from geological data are subject to different interpretations, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field." Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom. Planet Corp. v. Hodel, Civ. No. 86-679 HB (D.N.M. May 6, 1987). We believe a similar conclusion is appropriate here. Appellant's arguments do not persuade us that there was a material error in the BLM analysis.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Idaho Falls District Office are affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge.

